

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Devontia Atkinson,

Plaintiff,

vs.

Las Vegas Valley Water District

Defendant.

Case No. 2:23-cv-01350-ART-VCF

ORDER

APPLICATION TO PROCEED IN FORMA PAUPERIS
(EFC No. 2)

Pro se plaintiff Devontia Atkinson filed an application to proceed in forma pauperis (IFP) and complaint. ECF No. 2. I deny Atkinson's IFP application.

DISCUSSION

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status." *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty "with some particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed

1 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
 2 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
 3 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
 4 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
 5 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
 6 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
 7 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
 8 pauperis application).

9 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for
 10 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated
 11 persons. The Long Form requires more detailed information than the Short Form. The court typically
 12 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
 13 that the plaintiff is concealing information about his income for determining whether the applicant
 14 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
 15 form must be submitted, and the applicant must provide all the information requested in the Long Form
 16 so that the court is able to make a fact finding regarding the applicant's financial status. See *e.g. Greco v.*
 17 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
 18 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
 19 2016 WL 7493963 (D. Nev. Dec. 30, 2016). Federal Rules of Civil Procedure Rule 10(a) commands that
 21 the title of every complaint must name all the parties. "The normal presumption in litigation is that
 22 parties must use their real names." *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d
 23 1036, 1042 (9th Cir. 2010).

24 Atkinson filled out the short form: he leaves question two, which asks about his income, blank.
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1 ECF No. 2 at 1. He also leaves question 3(a) through 3(d) which asks questions about his sources of
2 income blank. *Id.* In response to question 3, he says that his wife has a full-time job and she handles
3 everything, but he does not reveal his wife's income. In response to question 5 he states that his property
4 is in his wife's name. *Id.* at 2. Plaintiff provides no information about his wife's income or assets. I find
5 that plaintiff's IFP application is incomplete, so I cannot determine if plaintiff qualifies for IFP status.

6 I will allow plaintiff another opportunity to show that he qualifies for IFP status. Plaintiff must
7 fill out the long form application. The long form application specifically asks for information about a
8 pro se plaintiff's spouse's income and assets. Plaintiff must answer all questions on the long form, and
9 he cannot leave any questions blank.

10 ACCORDINGLY,

11 I ORDER that plaintiff Atkinson's application to proceed in forma pauperis (ECF No. 2) is
12 DENIED WITHOUT PREJUDICE.

13 I FURTHER ORDER that by Thursday, October 12, 2023, plaintiff Atkinson must either (1) file
14 the long form application to proceed in forma pauperis as specified in my order or (2) plaintiff must pay
15 the full fee for filing a civil action.

16 I FURTHER ORDER that failure to timely comply with this Order may result in a
17 recommendation that this case be dismissed with prejudice.

18 **NOTICE**

19 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
20 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
21 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
22 may determine that an appeal has been waived due to the failure to file objections within the specified
23 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
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1 objections within the specified time and (2) failure to properly address and brief the objectionable issues
2 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
3 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
4 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written
5 notification with the court of any change of address. The notification must include proof of service upon
6 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.

7 **Failure to comply with this rule may result in dismissal of the action.**

8 IT IS SO ORDERED.

9 DATED this 12th day of September 2023.

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11 CAM FERENBACH
12 UNITED STATES MAGISTRATE JUDGE
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